RESPONSE OF THE DUTCH AUTHORITIES TO THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE

Co-operation

1. The CPT trusts that the Dutch authorities will take appropriate steps to ensure that, in future, visiting delegations enjoy access without delay to all places of deprivation of liberty, and that visiting delegations are provided with full information on all such places (paragraph 6).

The Government regrets the incident in which the Committee's delegation was not granted immediate access. Prior to the visit, a lot of energy was devoted to informing all locations that could be visited by the Committee. It will be assessed whether this information provision can be further tightened for future visits.

Furthermore, the Committee was, by mistake, not informed about all locations within the police organisation that contain holding rooms. It will be made sure that such omission will not take place during a next visit.

2. The CPT trusts that the Dutch authorities will take appropriate steps to ensure that, in future, visiting delegations enjoy unconditional access to all the medical records necessary in order for it to carry out its task and that the Convention's provisions are thus fully implemented (paragraph 7).

The legislative proposals for the Care and Coercion Act, the Forensic Care Act and the Mandatory Mental Healthcare Act provide for the Committee's powers with respect to access to the institutions and the inspection of patient files, even without a patient's permission. The legislative proposal for adoption of a Forensic Care Act was recently adopted by the House of Representatives and is now being debated in the Senate. The other two legislative proposals are currently still being debated in the House of Representatives. It is therefore not yet possible to say when these acts will enter into force.

The relevant legislative proposals include the following text: "Members of the Subcommittee on Prevention as referred to in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted in New York on 18 December 2012 (Treaty Series 2005, 243) and the Committee as referred to in the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment adopted in Strasbourg on 26 November 1987 (Treaty Series 1988, no. 19), as amended by Protocol 1 and Protocol 2 (Treaty Series 1994, 106 and 107) shall be given the same powers as the officials charged with the supervision referred to in the third paragraph. They shall only use these powers insofar as reasonably required for their tasks arising under the relevant convention. Article 5:20(1) of the General Administrative Law Act shall apply *mutatis mutandis*."

National Preventive Mechanism (NPM)

3. The CPT considers that care should be taken to ensure that all elements of the NPM's structure and all the personnel concerned comply with the requirements laid down by the OPCAT and the Guidelines established by the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) (paragraph 9).

The importance of the (functional) independence of national preventive mechanisms, as laid down in Articles 17 and 18 of the Optional Protocol to the Convention against Torture (OPCAT), is fully recognised by the Dutch authorities. Following the ratification of OPCAT, the Ministry of Security and Justice appointed various independent agencies as independent national preventive mechanisms (NPMs) in December 2011.[1] Custodial institutions and other locations where persons deprived of their liberty are staying were already supervised by these agencies at a national level.

At the time, the independent Implementation of Sanctions Inspectorate (*Inspectie voor de Sanctietoepassing* or ISt) declared itself willing to act as coordinator of the NMPs. This ISt – together with the Public Order and Safety Inspectorate (*Inspectie Openbare Orde en Veiligheid* or IOOV) which was also appointed NPM – now forms part of the Security and Justice Inspectorate (*Inspectie voor Veiligheid en Justitie* or IVenJ). The Security and Justice Inspectorate also functions independently and, in the Government's opinion, meets the requirements set by the OPCAT, as explained in the guidelines of the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).

The functional independence of the Security and Justice Inspectorate will be formally enshrined in the regulations applicable to this inspectorate.

Law enforcement agencies

4. The CPT trusts that the positive trend observed as regards the length of stay of persons in police detention facilities will be maintained. In addition, the CPT invites the Dutch authorities to consider revoking Articles 15a of the Penitentiary Principles Act and 16a of the Juvenile Detention Principles Act (paragraph 13).

The Netherlands aims to keep the application of Article 15a of the Penitentiary Principles Act to a minimum. It is a positive thing that the Committee finds that this article has been applied only a few times over the past years. However, the Netherlands chooses not to revoke this article. In exceptional cases (in case of capacity shortage), the Netherlands wants to maintain the possibility of keeping detainees in a police cell during the first ten days of detention. Evidently, all efforts will continue to be aimed at reducing this to exceptional cases. The same applies to the similar provision of the Juvenile Detention Principles Act (Article 15) and the least possible application thereof.

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[1] For information purposes, the Government refers to the First Annual Report of the National Preventive Mechanisms The Netherlands.

5. The CPT requests updated information concerning the reorganisation of the Dutch police forces and, in particular, on any changes that might affect deprivation of liberty by the police (legal framework, police holding facilities and detention units, monitoring bodies entrusted with visiting detention facilities, etc.) (paragraph 11).

The reorganisation concerns the creation of a single national police force with 10 regional units (equivalent to court districts), a national operational unit and one or more support services. The national police force is a separate legal entity and therefore does not form part of a ministry. Police authority will continue to lie with the mayor (as far as maintaining public order and emergency services are concerned) and the public prosecutor (as far as preserving law and order and the tasks in the service of the judicial authorities are concerned). Police management will, however, be centralised and put under the direction of the Chief Constable, the management body of the police legal entity. The Chief Constable is subject to the general and special power of the Minister of Security and Justice to give instructions, who is fully politically responsible for police management.

The Police Act 2012 entered into force on 1 January 2013. The change in the organisation of the police does not affect the implementation of custodial measures by the police. However, there will be a change in the manner of supervision. A topic of discussion is the question as to where this supervision will be placed in the new system. It is important that the independence of supervision continues to be guaranteed.

<u>Safeguards against ill-treatment</u>

6. The CPT recommends to amend Article 62 of the Code of Criminal Procedure in order to circumscribe more precisely the possibility to delay the exercise of a detained person's right to notify his/her deprivation of liberty to a third party and to set a time-limit on the application of such a measure (paragraph 15).

Article 62(2)(a) of the Code of Criminal Procedure provides for the possibility to impose restrictions on suspects who have been detained in custody. These limitations may relate to receiving visitors, telephone communications, the exchange of letters and the delivery of newspapers, reading material or other data carriers, or other measures relating to the stay within the context of deprivation of liberty. According to the opening words of the second paragraph, these measures may be taken in addition to Article 50, which, in principle, allows freedom of communications between lawyers and suspects, again, however, with the possibility to impose restrictions under strict conditions.

As the Committee understands, this measure also includes the postponement of suspects informing their relatives of the deprivation of their liberty. Article 27d (as included in the legislative proposal for the presence of a lawyer during police questioning) includes that the arrested suspect must be informed of his rights, including the right to inform a relative. The contents of the current Articles 50 and 62 will remain unchanged, which means that, in the interest of the investigation (Article 62), the suspect is given the opportunity to inform his relatives at a later point in time. This does not affect the fact that lawyers who are called to provide the arrested suspect with legal assistance prior to his questioning are able to convey the message of the deprivation of his freedom. Furthermore, the restrictions also end when the deprivation of freedom ends. A large number of suspects (approximately 40%) is released before the end of the period of police custody. The rationale of this rule is that suspects are

able to take measures (or arrange for measures to be taken) for the care and safety of those directly dependent on them (family members, pets, house, employers).

The adopted EU Directive 2012/13/EU on the right to information in criminal proceedings states that suspects who are arrested will immediately be issued with a written "letter of rights". This letter should contain, among other things, information about the national applicable rules with respect to the right to inform consular authorities and a relative of the arrest or detention (Article 4(2)(b) of the Directive). Paragraph 23 of the preamble is relevant in this connection. This provides the following: "Specific conditions and rules relating to the right of suspects or accused persons to have another person informed about their arrest or detention are to be determined by the Member States in their national law. As set out in the Roadmap, the exercise of that right should not prejudice the due course of the criminal proceedings." This means that the Directive recognises that restrictions on the right to inform a relative are allowed in the interest of the due course of the criminal proceedings.

Article 5 of the draft directive of the European Union on the suspect's right of access to a lawyer states as follows:

> 1. Member States shall ensure that a suspect or accused person who is deprived of his liberty has the right to have at least one person, such as a relative or employer, named by him, informed of the deprivation of liberty without undue delay, if he so wishes.
> […]
> 3. Member States may temporarily derogate from the application of the rights set out in paragraphs 1 and 2 when this is justified by compelling reasons in the light of the particular circumstances of the case.

Member States are thus obliged to ensure that a suspect who has been deprived of his liberty can have a relative informed. This means that it is sufficient that a relative is informed of the deprivation of his liberty (by his lawyer or the police) and not necessarily that the suspect is allowed to contact this relative himself.

The Committee's recommendation is that the Netherlands should use the discretion these two recent EU directives expressly leave for Member States to set further conditions in national law. The Government is not convinced of the desirability and necessity hereof. Separately setting a specified period within which the suspect is by definition given the opportunity to inform third parties of his detention, apart from the possibility of assessing the deprivation of liberty, seems superfluous, as all arrested suspects are offered the possibility of legal assistance prior to the police questioning. During this initial phase of the preliminary investigation, the criterion of "interest of the investigation" will suffice, and a further tightening of this is not feasible.

7. The CPT recommends to remove the restriction excluding persons suspected of "C category offences" from legal assistance paid by the Legal Aid Board (paragraph 18).

The manner in which the Salduz ruling of the European Court of Human Rights (ECtHR) has currently been reflected in Dutch legal practice has been set out in a direction issued by the Public Prosecution Service. Here, the legal interpretation of the Dutch Supreme Court, the highest court of justice in the Netherlands, which has interpreted the consequences of the Salduz ruling for the Netherlands, has been taken into account. This direction guarantees that juveniles are offered free legal assistance. A legislative proposal on lawyers and police

questioning, which further specifies the manner of implementation under Dutch law of the obligations arising under this ruling and the draft directive on access to legal assistance which is now being debated, within the context of the European Union, between the European Parliament, the European Commission and the Member States, is being prepared.

8. The CPT recommends to remind all police officers of the purpose and content of Article 32 (2) of the Police Guidelines relating to access to a doctor of one's own choice (paragraph 20).

The Government will draw the police organisation's attention to the shortcoming found by the Committee, in order to ensure that the instruction of police officers with respect to this point is also sufficiently guaranteed in their education and training.

9. The CPT trusts that further steps will be taken to ensure the full recognition of the right of access to a lawyer for all detained persons as from the outset of their deprivation of liberty. In addition to the right to talk to the lawyer in private, the person concerned should also, in principle, be entitled to have a lawyer present during any interrogation conducted by the police. Naturally, this should not prevent the police from beginning to question a detained person in those exceptional cases where urgent questioning is necessary, even in the absence of a lawyer (who may not be immediately available), nor rule out the replacement of a lawyer who impedes the proper conduct of an interrogation (paragraph 17).

A legislative proposal on lawyers and police questioning is being prepared, which aims to include a regulation in the Code of Criminal Procedure which allows suspects to rely on access to and assistance from a lawyer in an earlier stage than currently laid down by law. This ensures that a suspect who has been arrested for a criminal offence in order to be questioned at a police station, has the right to legal assistance in the form of a conversation with a lawyer prior to the police questioning (legal assistance prior to questioning). Furthermore, the legislative proposal aims to grant a right to legal assistance during the police questioning with respect to criminal offences at the suspect's request (legal assistance during questioning) as a result of the granted legal assistance prior to questioning. With reference to this, the legislative proposal contains amended provisions on informing the suspect of his rights, the regulation of the arrest, the detention for the purpose of the investigation, the questioning, bringing the suspect before the public prosecutor and granting legal assistance during the initial phase of the criminal proceedings. It provides for exceptional situations for cases in which it is not possible to wait for a lawyer to arrive.
The legislative proposal implements the right to legal assistance and the requirements set by the European Convention for the Protection of Human Rights and Fundamental Freedoms on a fair trial in criminal proceedings. This includes the further explanation given by the ECtHR of those provisions in its case law (Salduz et seq.) and further specified for Dutch legal practice by the Dutch Supreme Court in June 2009. To an important degree, the legislative proposal follows on from the practice created after the entry into force of the directive of the Board of Procurators General of 1 April 2010, which translates the case law of the ECtHR and the Dutch Supreme Court into Dutch legal practice.
The preparation of the legislative proposal also takes into account the future European Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, for which a General Approach was adopted in June 2012.

10. The CPT requests for the years 2010-2011, the number of cases in which Article 62 (2) b was invoked vis-à-vis criminal suspects (paragraph 15).

Article 62(2)(b) of the Code of Criminal Procedure relates to the transfer to a hospital, another institution guaranteeing medical supervision, or a stay in a specially designed cell under medical supervision. The Government is unable to provide the Committee with the national figures requested. This information is processed in the custody modules, but technically not in such a way as to produce a national figure.

<u>Conditions of detention</u>

11. The CPT recommends to take steps to ensure that cells at Apeldoorn Police Station respect Article 6 (1) of the Regulation on police cell complexes (paragraph 22).

The provisions of European and Dutch regulations are observed as a standard during the construction of custodial buildings. Article 6(1) of the Regulation on police cell complexes as referred to by the CPT provides that cells must have openings of light, which are placed in inner or outer walls such that prisoners can observe the day and night cycle.

The roof of the Apeldoorn police cell complex has glass openings so that light can enter the cell corridor. Milk glass openings of light have been placed over the cell doors. Although this semi-transparent glass prevents an unobstructed view from the inside or outside, its proper translucence ensures that the difference between day and night can clearly be observed from the cells. As a result, the Apeldoorn police cell complex meets the applicable guidelines.

12. The CPT recommends to strictly limit the use of the cubicles described in paragraph 23 to very brief waiting periods, either immediately prior to the questioning of the suspect or immediately before his transfer to a suitable detention facility. The total time actually spent in these facilities should never exceed 6 hours. Furthermore, such cubicles should never be used as overnight accommodation (paragraph 23).

From their nature, holding rooms are not aimed at accommodating detainees between midnight and 9.00 am. In principle, there are no interrogations at night, which is why the period of detention (of no more than 6 hours), if it has not expired at midnight, can be extended by 9 hours. During this period, the detainee is transferred to a police cell. A holding room is not designed for staying overnight and can therefore not be regarded as a police cell. The maximum of spending 6 hours in a holding room has not been laid down. However, an actual stay in a holding room is closely connected with the 6-hour period in which a suspect may be detained for questioning. This period may be extended by no more than 6 hours if establishing the identity of the detainee so demands. As a result, it may sometimes happen that detainees have to reside in a holding room for more than 6 hours during the day. In view of the minimum facilities in a holding room, it is evident that the aim should always be to reduce the actual stay to the shortest possible period. In that sense, the Committee's recommendation is endorsed.

13. The CPT recommends that cubicles of the kind described in paragraph 23 to be fitted with secured translucent doors to avoid as much as possible their oppressive effect and enable direct monitoring of the detained persons (paragraph 23).

This recommendation of the Committee will be taken into account as a point for attention during the construction of new cell complexes.

14. The Dutch authorities are invited to establish whether all police cells in the Netherlands comply with Article 6 (1) of the Regulation on police cell complexes and, if necessary, to remedy any shortcomings. Further, this provision should be taken into account when refurbishment or construction of police stations is carried out in the future (paragraph 22).

With reference to the answers to point 11, the Government emphasises that police cell complexes are built with due observance of national and European regulations. In each police region, an independent Police Cell Supervision Committee ensures that the rights of detainees are guaranteed and that detainees are processed and escorted in the best possible way. Moreover, the Security and Justice Inspectorate (*Inspectie Veiligheid en Justitie*) has been appointed coordinating national supervisory authority within the context of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Based on its supervisory role with respect to the police, the Security and Justice Inspectorate also supervises the situation in police cells, holding rooms and cells in court buildings. If a regional Committee or the umbrella Inspectorate detects a shortcoming, the Government will ensure that the relevant accommodation complies with the applicable regulations as soon as possible.

15. The CPT requests information about the progress of the official investigation that was launched concerning a suspected suicide that occurred at the Hague Central Court detention facility the day before the CPT's visit (paragraph 25).

The National Police Internal Investigations Department conducted an independent investigation into the circumstances of this tragic incident. This investigation showed that the staff charged with the care for the person concerned acted in accordance with the applicable instructions. The person concerned was, however, restless because apparently he believed that he would be deported (which was not at issue). Due to the language barrier - the person concerned was Lithuanian - it was not easy to properly communicate with him. Before the person concerned committed suicide, he was offered a meal in his cell, which he also ate. There were no specific indications to suspect that the person concerned was suicidal. There was thus no reason to confiscate the cord from his jogging bottoms, which he later used to hang himself. Not confiscating the cord was not in violation of any of the instructions, which are aimed, among other things, at giving a suspect the opportunity to appear before the court with as much dignity as possible (and therefore, if at all possible, not having to hold up his pants). The investigation by the National Police Internal Investigations Department did not show any irregularities that should result in disciplinary measures or criminal prosecution.

Prison establishments

16. Lifers and other long-term prisoners should not be systematically segregated from other prisoners (paragraph 28).

It is important to give substance to the enforcement of the life imprisonment in a tailored way. A survey conducted by the Custodial Institutions Agency (*Dienst Justitiële Inrichtingen* or DJI) among persons sentenced to a life sentence showed that most of them prefer to stay in a ward together with other long-term prisoners. In line with the personal approach of the Prison system modernisation project (MGW), the results of the survey will be used to create the possibility of placing prisoners serving a life sentence together with prisoners serving a very long sentence. Wards will be created for this purpose. The living conditions in the wards to be created will be better attuned to a long-term stay than the living conditions in regular prison wards, where prisoners serving a short sentence usually reside. Persons serving a life sentence will be placed on these wards designed for them and long-term prisoners on a voluntary basis. Moreover, being placed in this ward does not mean that all activities take place separately from other detainees.

17. The CPT would like to receive the Dutch authorities' comments concerning the implications of the increase in the female prison population for the prison system (capacity of the female detention units, female staff resources, etc.) (paragraph 26).

The Government regrets this representation of the facts, as, in the Government's opinion, there is no factual basis for this. The percentage of female detainees has not doubled over the past ten years. The number of women's prisons is currently even reduced from five to three as the occupancy rate was too low.

The misunderstanding could be the result of the fact that the Committee used the inflow numbers (the total percentage of females in the inflow amounts to 8.7%). The share of women in the population, however, is much smaller (because of the fact that, on average, women serve shorter sentences than men). The percentage of women in the population for 2010, for example, was 6.4%.

The website of Statistics Netherlands (*Centraal Bureau voor de Statistiek* or CBS) shows this percentage of women in the population throughout the years.

2001	6.4%
2002	6.5%
2003	6.0%
2004	6.6%
2005	6.5%
2006	6.7%
2007	6.6%
2008	6.9%
2009	6.6%
2010	6.4%
2011	6.1%

18. The CPT requests information about updated information on the evolution and implementation of the "Prison system modernisation project" ("MGW") (paragraph 27).

For this, the Government refers to Annexe 1 on the Prison System Modernisation Programme (*Programma Modernisering Gevangeniswezen*).[2] In addition, and for your information, the Government would like to draw the Committee's attention to a 'Masterplan' that was presented to Parliament in June 2013 (see Annexe 2).[3]

19. The CPT requests information about updated information on the pilot project aimed at placing lifers and other long-term prisoners in special units in the prison system (paragraph 28).

For this, the Government refers to Annexe 3 (Letter from the State Secretary for Security and Justice of the 16th of April 2012, TK 2011-2012, 24 587, no. 464, § 3).

Ill-treatment

20. The CPT recommends to draw the attention of management and staff working in all establishments under the responsibility of the National Agency for Correctional Institutions to the ministerial circular of 9 January 2003 (ref. 5195514/02/DJI) (paragraph 31).

This circular will be brought to the attention of the directors of prisons (again).

21. The CPT recommends to take steps to ensure that the principles outlined in paragraph 32 as regards strips searches are applied throughout the prison system in the Netherlands (paragraph 32).

Article 29(1) of the Penitentiary Principles Act states that the director of a prison is authorised to search the body and clothes of detainees when they arrive, when they leave the institution, before or after visits or if this is otherwise necessary in the interest of maintaining order or safety in the institution. The explanatory notes say that, in any case, the said search can take place in the situations referred to in the first paragraph. Moreover, a body search may be performed if otherwise so demanded in order to maintain order or safety. The legislator hereby indicated that, in the situations referred to in the first paragraph, the interest of order or safety may always be assumed. The underlying idea is the circumstance that, in these situations, detainees came into contact with (persons in) the outside world and could carry items on them that are incompatible with the order or safety in an institution. In particular, it concerns communications devices (telephones and items that can be used to connect to the Internet), drugs and weapons. Partly with an increased view of the safety of detainees and staff, the Government will make every effort to prevent such illegal imports. In principle - and also shown by experiences in the detention field - all detainees are able to engage in illegal imports or exports. In doing so, they do not hesitate to hide objects in body cavities. In these cases, an individual risk analysis will have no added value, because the outcome of such analysis will always be that the search is demanded in order to maintain order and safety. No matter how uncomfortable such a search is for all those involved, it is unfortunately a bitter necessity in view of the order and safety in a secure institution.

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[2] Instruction file for members of the House of Representatives of the States General.
[3] Letter of the 17th of June 2013 of the State Secretary of Security and Justice, including the annexed Masterplan.

In the cases referred to by the CPT and in which, for reasons of hygiene, detainees are fully unclothed, all clothes are removed and checked. For safety reasons, it is not appropriate to check part of the clothes and have them put back on and then remove other clothes. This will create the risk that the detainee hides any forbidden imports or puts them in clothes that have already been checked. In this respect, the resourcefulness and skills of detainees should not be underestimated.

As a rule, there will always be a member of staff nearby during the body search and the body search will preferably and if possible be performed by a person of the same sex. If in exceptional cases, however, there is no staff member of the same sex present, it will go too far not to proceed with a body search in view of maintaining order and safety in the institution. In view of the great importance the Government attaches to the safety in institutions and the related safety of staff members and fellow detainees, a body search will have priority in such cases.

Because, as a rule, visits already take place under general supervision, the Government is considering that, in these cases - and in order to prevent arbitrariness -, a 'clock' is used that gives a signal at random that a body search should be performed on a detainee. The staff has no influence on this.

Conditions of detention

22. The CPT recommends to review the programme of activities available to foreign prisoners with "VRIS" status, in particular in respect of education, vocational training, and re-socialization activities, with a view to ensuring that they are not disadvantaged in comparison with the general prison population in the Netherlands (paragraph 36).

In this respect a difference should be made between foreign prisoners with "VRIS" status who are detained for a short period of time and those who are detained for a longer period of time. "VRIS" prisoners who are detained for a *short* period of time (less than four months) are not offered regular work or education, except for occasional educational activities such as literacy training and domestic work. The "VRIS" prisoner will not reintegrate into Dutch society and activities aimed at social rehabilitation are therefore deemed to be incompatible with the nature of this particular group of prisoners. However, with regard to "VRIS" prisoners who are detained for a longer period of time (four months or more), the programme of activities is more extensive.

23. The CPT requests information about measures taken in order to address the complaints made by prisoners about the food provided to them (paragraph 34).

The diet offered in custodial institutions is in line with the quantities and composition recommended by the Netherlands Nutrition Centre. Any adjustments to this contract are - also based on tendering rules under European law - not possible.

Health care services

24. The CPT recommends to increase the medical staffing level at Veenhuizen penitentiary establishment to two full time equivalent (FTE) posts of medical doctor (paragraph 37).

Following the recommendation of the CPT, the deployment of medical staff in the Veenhuizen penitentiary establishment has been examined in more detail.

The use of medical care in prison institutions is based on the "equivalence principle": the quality of the care for detainees should be equivalent to the quality of the care for free citizens. With 44 hours of general practitioner care per week, the Veenhuizen penitentiary establishment, with an institution population of approximately 600 detainees, meets the standard set in consultation with the National Association of General Practitioners (including the doctor's presence during necessary consultations). Consulting hours are regularly held at all locations. If the doctor is absent, he will be replaced. Furthermore, the doctors are also available within the set time limit outside office hours and/or in emergencies. Moreover, many prison nurses are deployed. In doing so, the Veenhuizen penitentiary establishment believes that it provides detainees with care that is certainly equivalent to the care for other citizens and sees no reason to increase the number of hours available for general practitioners within the establishment.

In this connection, the Government also wants to emphasise that few medical complaints are filed about the Veenhuizen Esserheem penitentiary establishment. For instance, 10 complaints were filed in 2011, 8 of which were declared unfounded.

25. The CPT comments that medication should preferably be distributed by health-care staff (paragraph 39).

The preconditions for proper pharmaceutical care within the DJI are organised/guaranteed in the following way. Medication is delivered by pharmacies to institutions on a daily basis in so-called CUPs (client unit packagings), which are also arranged at the pharmacy per individual per ward in the order in which the medication is distributed. These pharmacy services ensure that the institutions only need to deliver the right bag to the right person. Any high-risk actions are performed at the pharmacy. Distributing medication is not an action that is reserved to care professionals; however, staff members must be trained sufficiently in order to perform this task. The DJI executive staff members are instructed periodically by the medical service in cooperation with the pharmacy in order to distribute medication in a responsible way.

The CPT's concern that stating the name of the medication may result in a breach of doctor-patient confidentiality is not shared by the Government. In this context, it is relevant that the concerned staff members are themselves bound by official secrecy. In addition, the Government refers in this context to Article 457, second section, Book 7, of the Dutch Civil Code. The law of the Netherlands includes a general obligation, applicable to the care provider, to not provide information about the patient to persons other than the patient. However, the above-mentioned provision does make it clear that 'persons other than the patient' does not include "those who are directly involved in the fulfilment of the treatment contract and the person acting as the replacement of the care provider, in so far as the

provision of information is necessary for the activities to be performed by them in that context". In fact, this legal exception is relevant in the above-mentioned situation. Moreover, under Article 21 of the Personal Data Protection Act - which is used to implement the European Privacy Directive (no. 95/46/EC) on a national level - the Minister of Security and Justice may process medical data insofar as this is necessary in connection with the enforcement of custodial sentences or custodial measures. This has been specified in Article 42(4) of the Penitentiary Principles Act: the director of the prison is responsible for the distribution of medicines and diets prescribed by the doctor employed by the institution (or his/her substitute).

The law dictates that the name of the medication and the dosage be stated on a bag. The fact that, as a result, executive staff members are aware of the use of medication by detainees was found in a recent judgment of the Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming* or RSJ, 12/1591/GM of 10 August 2012) not to constitute a breach of doctor-patient confidentiality: "Under Article 457 of Book 7 of the Dutch Civil Code, care providers are obliged not to provide any information to persons other than the patient. However, this does not include those who are directly involved in the execution of the treatment contract, insofar as the distribution is necessary for the work to be performed by them in this context. The appeals committee believes that a prison officer in a custodial institution should be regarded as a person involved in the treatment to whom the doctor's professional confidentiality does not apply."

Based on both the preconditions for responsible pharmaceutical care and the judgment of the RSJ, the DJI sees no reason to have medication distributed by care professionals (question 25). As a result, it is not necessary to answer question 26. The distribution is not in accordance with national policy, but in accordance with national legislation in a formal sense. We therefore do not follow this recommendation.

26. The Dutch authorities are invited to draw up a list of medication that should in every case be distributed by health-care staff (such as anti-psychotic and anti-retroviral drugs and methadone) (paragraph 39).

The Government refers to the answer under 25.

<u>Other issues</u>

27. The CPT recommends to equip the disciplinary cells at Arnhem-Zuid Prison with a table, adequate seating for the daytime (i.e. a chair or bench), and a proper bed and bedding at night (paragraph 43).

The policy on solitary confinement is currently under review. This recommendation of the Committee will be included in this review. It is expected that the new policy framework will be ready at the end of 2013. Moreover, the Government hereby wants to inform the Committee that the Arnhem Zuid penal institution in De Berg is due to be closed as from 2016.

28. The CPT recommends to provide proper "outdoor exercise" facilities for prisoners placed in the disciplinary unit at Arnhem-Zuid Prison (paragraph 43).

As a result of this recommendation, all outdoor exercise facilities will be adjusted to the constructional requirements. This recommendation will also be included in formulating the new policy framework on solitary confinement.

29. The Dutch authorities are invited to remedy the potentially oppressive effect of the frosted glass installed in the windows in disciplinary cells in both prison establishments visited (paragraph 43).

The Government refers to the answer to point 27.

30. Visits around a table (with no partition) should be the rule and visits with partitions the exception, based on an individual risk assessment (paragraph 45).

Unfortunately, the Government will not follow this recommendation. In the Government's opinion, this stipulation is necessary in view of drug discouragement. This policy has been approved by Dutch Parliament.

31. The Dutch authorities are invited to amend Article 37 of the Penitentiary Principles Act to include the CPT in the list of institutions/bodies with which any prisoner might communicate on a confidential basis (paragraph 48).

In Article 37 of the Penitentiary Principles Act, the Netherlands will include a reference to (international) bodies that are charged with supervising the prison system under conventions.

32. The CPT requests information about the measures taken or envisaged to address the issue of "emotional work stress" of staff at Veenhuizen – Esserheem Prison (paragraph 40).

According to the management of the institution, the emotional work-related stress was related to a lack of motivation, connected with the circumstance that the so-called VRIS population (foreign nationals in the criminal justice system) was not granted a reintegration into (Dutch) society, which was worsened by language problems. This must be seen in a context in which it concerned staff members who used to be familiar with dealing with Dutch detainees and in which there was no experience with dealing with the new target group of foreign nationals imprisoned for a criminal offence.

As a result of the centralisation of this target group, this context no longer applies. The group will be centralised in an institution where the staff is accustomed to working with foreign nationals in a multilingual environment. The Government therefore anticipates that the personnel will not experience the mentioned emotional work stress in the new setting.

33. The CPT would like to receive the Dutch authorities' comments on the information received that, in some prison establishments in the Netherlands, there was a tendency to delegate the disciplinary power to lower level management (as opposed to the governor or his deputy themselves), including for the imposition of the most severe disciplinary sanctions, such as solitary confinement in a punishment cell (paragraph 42).

The question as to the management level at which the power to take punitive measures and disciplinary action can be exercised will be answered in the legislative proposal to amend the Penitentiary Principles Act. This legislative proposal takes into account the fact that it concerns far-reaching powers that must be brought into line with the changes that have occurred in the prison system over the past years.

34. The CPT would like to receive the comments of the Dutch authorities on the impossibility for prisoners to made cheaper international calls by using pre-paid phone cards (paragraph 47).

The situation in Esserheem somewhat differs from the situation in other prisons. Esserheem detains foreign nationals who have committed a criminal offence (and who have no right of residence). These foreign nationals are to return to their country of origin after they have served their prison sentence. In order to prepare for their return as well as possible, it was decided to offer them more wide ranging communication options. For this purpose, two laptops were provided which can be used to contact family members free of charge through the Internet (Skype). In this case, it does not concern a right, but a favour because many detainees do not have enough money to make long-distance phone calls using regular telephones. Detainees can sign up for this type of calls and are usually given 30 minutes. Not all detainees use this facility, because the person receiving the call must also use Skype.

As regards the other institutions, detainees are offered telephone services by a contracted market player. In 2012, a switch was made to a new provider. This switch is accompanied by a new rate structure, causing some rates to go up and others to go down (compared to KPN, the most frequently contracted provider so far). It is correct that as a result of the switch to the new telephone provider, the use of pre-paid phone cards has been blocked. This was done for security reasons. The use of pre-paid phone cards makes it impossible to trace the number that is called.

Moreover, it is customary in the prison system that detainees can, at their own expense, make longer phone calls than the statutory minimum of ten minutes per week. In this regard, the situation in Esserheem is not exceptional.

35. The CPT requests clarification as to whether the Inspectorate for Implementation of Sanctions' mandate covers the investigation of allegations of ill-treatment and issues related to prison disturbances (paragraph 50).

Yes, the mandate of the Security and Justice Inspectorate, which has replaced the Inspectorate for Implementation of Sanctions, pursuant to the Decree establishing the Inspectorate for Implementation of Sanctions, does indeed cover allegations of ill-treatment and issues related to prison disturbances.

Foreign nationals held under aliens legislation

The State Secretary for Security and Justice has announced that, before the end of the year, the Government will propose an amendment introducing a separate administrative statutory framework for the detention of foreign nationals. It is currently working on a future vision for the detention of foreign nationals, which will most likely be presented to the Dutch Lower House in September of this year. This policy document devotes attention to the consequences (in terms of regime) involved with the new legal framework for the detention of foreign nationals, among other aspects. Furthermore, the capacity of the detention of foreign nationals is considerably adjusted downward. The current capacity, including reserve capacity, amounts to more than 2000 places. This will be halved to 933 places. As soon as this letter to parliament has been sent out, it will also be sent to the CPT for its information. The aforementioned bill will also be forwarded to the Committee, as soon as it is subjected to consultations.

36. The CPT recommends that the use of means of restraint to be considered on individual grounds and based on the principle of proportionality (paragraph 56).

The Minister of Security and Justice is responsible for a safe enforcement of measures and sentences. This also includes the safe transport of prisoners. With respect to all detained persons, including foreign nationals, it was assessed whether it is possible to have the transport take place without using measures of restraint as a standard. This survey has resulted in a changed instruction. The new basic principle is “no handcuffs, unless”. Measures of restraint are now only used during transport if the official authorised to make an assessment believes that there is a safety risk.

37. The CPT comments that applying handcuffs as a matter of routine to immigration detainees whenever they leave their detention facility is disproportionate (paragraph 56).

The Government refers to the answer to recommendation 36.

38. The Dutch authorities are invited to examine the possibility of drawing up a distinct set of rules for facilities accommodating foreign nationals detained under aliens’ legislation (paragraph 59).

Such a distinct set of rules will indeed be drawn up as was mentioned before.

39. The CPT requests further information about the implementation of the legislation according to which an illegal stay in the Netherlands would be regarded as a misdemeanour and could be punished accordingly, and its foreseeable impact as regard the country’s prison population (paragraph 53).

The previous government prepared a legislative proposal for making illegal residence punishable. The legislative proposal has been sent to the House of Representatives in January 2013. Since the proposal is still under consideration of Dutch Parliament, it is currently not possible to anticipate on the future of this proposal. It can, however, be stated that in the Government's view:

- following the legislative proposal, illegal residence will be a misdemeanour, not a felony;

- enforcement will prioritize aliens involved in criminal behaviour, causing public nuisance and on cases of migration-related fraud;
- the Government's view is that persons or organizations offering assistance to foreign nationals residing illegally in the Netherlands for humanitarian reasons are not liable to punishment;
- foreign nationals residing illegally will still have access to medical assistance and minors will still have the right to go to school, without having to fear a fine.

40. The CPT requests updated information concerning the legislative proposal pending in Parliament and providing for a maximum time-limit for the administrative detention of aliens (paragraph 54).

The new act came into force on 31 December 2011. Article 59 provides that the detention may take six months, to be extended with a maximum of twelve months.

41. With reference to Article 15 (3) of the EU Return Directive, the CPT would like to be informed about the review periods of a detention order, either on application of the foreign national concerned or ex officio, and of the authority involved (paragraph 54).

Pursuant to Articles 94 and 96 of the Foreign Nationals Act, foreign nationals may file an application for judicial review of the continuation of the measure *at any time*. There is no maximum number of applications for judicial review to be filed by foreign nationals and it is possible for foreign nationals to file a new application for judicial review immediately after the court ruling (or even before). It should be noted that most foreign nationals (circa 70%, as evidenced by statistics from the regular *Rapportage Vreemdelingenketen*, a regular report of organisations cooperating in the immigration process) are detained for *less* than three months.

Based on Article 94 of the Dutch Aliens Act 2000, Our Minister informs the court of the detention of the foreign national within four weeks, unless the foreign national lodges an appeal earlier than that. Once the court receives this notification, the foreign national is deemed to have lodged an appeal against his or her detention. In the minority of cases in which the detention exceeds six months, a notification will be sent out again. In most cases, however, the foreign national has already lodged an appeal before that time (through his or her counsel.

Within two weeks (after the notification or the appeal lodged by the foreign national), the court will schedule a session and will deliver judgement in court at the latest within seven days after the investigation has been closed. If the court believes the detention to be unlawful, the detention is ordered lifted or a change in the manner of execution is ordered.

42. The CPT would like to receive the comments of the Dutch authorities on the practice of re-arresting aliens shortly after they had been released from detention (on the expiry of the 18 month time-limit), if they had not left the country in the meantime (paragraph 54).

This conduct is not recognised by the Government and would be a breach of the law. If the detention in view of removal has ended after the period of 18 months has expired, a new measure that is imposed shortly afterwards would be unlawful due to the absence of an adequate prospect of removal. Only if the situation of the foreign national changes and there is still a prospect of removal could this be different. Only after a longer period of time could there be a reason to reassess the possibilities for removal and could a renewed prospect of

removal be assumed. It is, however, conceivable that foreign nationals whose detention under administrative law has ended are prosecuted and detained for illegal residence if Article 197 of the Penal Code applies to them. Such prosecution would not be contrary to the interpretation of the ruling of the European Court of Justice in the Achuchbabian case (C-329/11). The criminal court would under such circumstances rule upon the question if the return proceedings are halted, and if the alien remains on the territory without justified grounds.

43. The CPT requests confirmation that the boats which had been used as facilities for holding immigration detainees and the Rotterdam Airport Expulsion Centre visited in 2007 have been taken out of service (paragraph 55).

The detention ships were used at the time as temporary detention capacity. Currently, they are no longer being used. The DJI now has sufficient detention capacity for foreign nationals in permanent (newly built) constructions.

44. The CPT would like to receive the comments of the Dutch authorities on the remarks in paragraph 58 as regards the approach to be followed in cases of hunger (or thirst) strike (paragraph 58).

It is not standard practice for detained foreign nationals who go on hunger strike to be placed in segregation cells. The doctor recommends the director of the detention centre to transfer them to a segregation cell with camera supervision or a (prison) hospital if this is medically indicated. The doctor and the director determine in joint consultation if and when a person who is refusing to eat food is transferred to a segregation cell or to a (prison) hospital.

<u>Rotterdam Airport Detention Centre for Foreigners</u>

45. The CPT recommends to avoid, as far as possible, detaining families with children. If, in exceptional circumstances, detention cannot be avoided, its period should not exceed the maximum duration provided by law i.e. 28 days (paragraph 61).

Since January 2008, the Government's policy has been that, in most cases, families with minor children can only be detained if it is possible to make arrangements for the departure within a maximum period of fourteen days. If, in view of (forced) departure, a family with minor children must be supervised for a longer period of time, the family may be placed at a location where one's freedom is restricted (for example by a duty to report daily) instead of at a location where one is deprived of one's liberty.

In 2012, 200 families with children who were minors were detained as foreign nationals pursuant to Article 6 or Article 59 of the Dutch Aliens Act 2000. The number of minors in these families was 350. The average stay of these minors in 2012 was 8 days.

Furthermore, a policy was introduced in March 2011 aimed at strongly limiting detention of unaccompanied minor foreign nationals as well. They can now only be detained if one or more of the following circumstances apply:

- the person concerned is suspected of or sentenced for a crime;
- the departure of the person concerned can be realised within fourteen days;
- the person concerned left the reception facility earlier for an unknown destination or did not comply with a duty to report or freedom-restricting measure imposed;

- the person concerned was denied entry at the external borders, and his/her minority has not yet been established.

Since the introduction of this new approach, we have observed a strong decline in the number of unaccompanied foreign nationals who are minors (UFM) being detained. In 2010, still approximately 220 UFMs were detained. Because of the described change in policy, this number has declined to 90 UFMs in 2011 and 50 UFMs in 2012. The average duration of an UFM's detention remains approximately 43 days.
Those UFMs who are detained because their departure from the Netherlands can be realised within fourteen days are in principle placed in a removal centre. This concerned approximately 20 UFMs in 2011 and approximately 20 UFMs in 2012. The measure for this group of UFMs without criminal background takes no longer than 14 days. In practice, this results in an average duration of detention of approximately 4 days in 2011 and approximately 6 days in 2012. This is well below the maximum term of 14 days.

46. The CPT recommends to review the practice at the Centre of locking up children in their cells, in the light of the remarks in paragraph 63 (paragraph 63).

The stay of the families in the detention centre is made as pleasant as possible considering the circumstances. The programme in the family ward of the Rotterdam detention centre ends at around 9.00 pm. In view of a safe living and working environment, this evening programme reflects the need to create peace during the hours intended for night's rest. The staff on duty in the family ward has been especially selected for this target group. Various adjustments have been made to the ward where the children are staying in order to have the stay proceed safely. A separate room has been created in the ward where children can play; there are enough toys, there are child's seats and there is a television. Through this room, it is possible to freely enter and exit the recreation yard throughout the day. The recreation yard also has large outdoor playing facilities. The central area has seats for children and parents to read, drink coffee or play games and there is a table tennis table and a football table. Finally, there are two recreational areas for cooking, eating, sitting and watching TV.

47. The CPT recommends to increase the medical staffing level at the Centre to at least 1.5 FTE posts of medical doctors (paragraph 66).

The Committee's recommendation has been studied in detail. However, for the moment the Government sees no reason to adjust the medical staffing level at the Centre. As already mentioned, the use of medical care in detention centres is based on "the equivalence principle": the quality of care for detained persons should be equivalent to the quality of the care in society in general. Standards relating to the ratio between general practitioners and institution population have been developed in consultation with the National Association of General Practitioners. The Government would like to emphasise that the medical staffing level at the Centre meets those standards. Likewise, it is important to note that the medical staffing level at the Centre is more than one FTE post of medical doctor. The Government would, however, like to point out that the situation in the Centre is currently under review of the Health Care Inspectorate. The Government will obviously review the situation again once the recommendations of that Inspectorate have been made public.

48. The CPT recommends to review the current practice as regards health-care screening of newly-arrived detainees, in the light of the remarks in paragraph 67 (paragraph 67).

Current practice has been reviewed. As a result, practice as regards health care screening of newly-arrived detainees has been amended. In the event of medical particulars already known at registration, such as in the case of registration for the Extra Care Department, the intake will always take place immediately upon arrival, provided that the arrival occurs between 7:30 a.m. and 8:00 p.m., meaning the business hours of the Medical Service.

For all other aspects, it turned out that the existing operating procedure was adequate, but the importance of complying with these (medical) procedures was emphasised once more.

In the current situation, a medical intake takes place as soon as possible after arrival, but in any case within 24 hours.
The work processes for the medical service as regards screening of detainees are as follows:

- The prison nurse visits all new detainees no later than on the next working day after arrival and before the weekend. Outside the opening hours of the medical service, it is always possible to rely on general practitioners who work in the evening, at night and at the weekend.
- The prison nurse informs the detainees about the organisation of the medical service, the various functions and roles in the referral process and the detainees' access to (psycho)medical care.
- The prison nurse records and assesses the data in MicroHIS [an information system used by Dutch general practitioners] during the conversation. In doing so, he/she uses a standard screening form.
- Based on this screening, the prison nurse decides whether a referral to the prison doctor or dentist is required. In doing so, he/she also assesses the level of urgency. In case of doubt or at the detainee's request, the prison nurse always refers the detainee to the prison doctor.
- Based on the screening, the prison nurse gives the detainee advice and information. If necessary, this also includes advice on self-care and prevention. The prison doctor advices the management on whether or not to place detainees in a multi-person cell, possibly after the preliminary work performed by the prison nurse.
- The prison nurse assesses whether all relevant data on the detainee's medical history are present and has him/her sign the consent form if necessary.
- In case of a high number of new arrivals, the prison nurse will conduct a short screening based on a risk assessment and under the ultimate responsibility of the prison doctor. The screening will completed the next working day.

49. The CPT recommends to take measures to transfer detainees suffering from the most severe forms of psychotic disorders to an appropriate psychiatric facility (paragraph 68).

To the DJI, the respect for the fundamental rights of detainees means that healthcare is offered in the institutions that is equivalent to the healthcare offered in free society.

Within the institution, the psycho-medical consultation (*psychomedisch overleg* or PMO) is charged with psychological care. The psychologist employed by the institution, a psychiatrist from the Netherlands Institute of Forensic Psychiatry and Psychology (*Nederlands Instituut voor Forensische psychiatrie en psychologie* or NIFP) and the medical director of the

institution participate in this consultation. The PMO may result in referring a detainee to a specialised care facility within the prison system, such as a penitentiary psychiatric centre or to a regular specialised (psychiatric) institution.

50. The CPT recommends to take steps to ensure that foreign nationals receive a written translation, in a language they understand, of the decisions concerning their detention as well as of the modalities and deadlines to appeal against such decisions (paragraph 69).

If it is decided to extend the detention of a foreign national, the foreign national and his/her authorised representative will be informed of this in writing, stating reasons. This decision also includes a clause on the legal remedies available. No translation will be offered. All decisions of the organisations cooperating in the immigration process (including decisions of the Immigration and Naturalisation Service) are in Dutch. It should be noted here, however, that foreign nationals are assisted by a lawyer and, where necessary, receive assistance from an interpreter.

51. The CPT recommends to take steps to ensure that foreign nationals detained at the Centre are duly and regularly informed about the status of their case in a language they understand (if necessary, through phone interpretation) (paragraph 71).

During the detention, foreign nationals are informed of the fact that the detention is for the purpose of removal. Moreover, foreign nationals are periodically informed by means of departure interviews with supervisors of the Repatriation and Departure Service (*Dienst Terugkeer en Vertrek* or DT&V) with the help of a (telephone) interpreter if the foreign national has insufficient command of the Dutch language. Upon arrival in a detention centre or removal centre, foreign nationals are also offered an information brochure that is available in various languages. This brochure explains why the foreign nationals are placed in a detention centre or removal centre and the brochure also contains, among other things, the legal remedies that are available.

52. The CPT recommends to provide the possibility of unsupervised visits for detainees at the Centre (paragraph 72).

The Government is considering the practicability of this recommendation. The DJI has been asked to give its advice about this, as well as on the feasibility of implementing the recommendation in the existing centres.

53. The Dutch authorities are invited to explore the possibility of offering some education to immigration detainees at the Centre. Emphasis should be placed on the possibility for the detainees concerned to acquire skills that may prepare them for reintegration in their countries of origin upon their return (paragraph 65).

Currently, the centres for detention of foreign nationals do not offer regular work or education, except for occasional educational activities such as literacy training and domestic work. The Government is of the opinion that foreign national detention is unsuitable for education or (regular) work. The aim of foreign national detention is to keep the foreign national available for the removal procedure, to establish the identity and to prevent foreign nationals from evading their removal. Elements aimed at social rehabilitation, such as offering work, education or regular leave are incompatible with the nature of the measure. Moreover, the average duration in the institution is unsuitable in order to offer such programmes, which

generally take longer. In order to compensate for the lack of work and education, it has been decided to offer at least four hours per week of extra substantive activities on top of the activities programme prescribed by law in all detention and removal centres. Depending on staff capacity and the availability of (recreational) rooms, the institutions are free to implement this however they see fit. Starting points for offering the extra activities are meaningful daytime activities and stimulating and activating the detained foreign nationals. Within this context, it is interesting to mention that, over the past few years, Internet facilities have been offered to detainees. If the Internet services continue to develop, offering digital learning environments (e-learning) will also be one of the options.

The Government would like to refer to the currently ongoing review of the applicable regime with regard to the detention of foreign nationals, as mentioned above.

54. The CPT comments that detainees diagnosed with severe psychiatric disorders but who are in remission should benefit from a special regime of activities conducive to their psychosocial rehabilitation, including more out-of-cell time (paragraph 68).

The Government would like to refer to the information provided with regard to recommendation 49. The PMO may refer a detainee to a specialised care facility. On medical indication, detainees can be transferred to a specialised psychiatric ward in the prison system, the Penitentiary Psychiatric Centre. This way, it will be possible to satisfy the Committee's remark.

55. The CPT requests information about measures taken in order to address the complaints made by detainees about the food provided to them (paragraph 62).

The diet offered in custodial institutions is in line with the quantities and composition recommended by the Netherlands Nutrition Centre. Any adjustments to the contract awarded to the company providing the meals are not possible, also in view of European tendering rules.

<u>Deportation of foreign nationals by air</u>

56. The CPT recommends to take the necessary steps to ensure that persons deprived of their liberty are only searched by staff of the same sex and that any search which requires an inmate to undress is conducted out of the sight of custodial staff of the opposite sex (paragraph 78).

The Government has followed this recommendation. The working instructions now require that the screening of female foreign nationals must always be conducted by a female staff member of the Royal Netherlands Marechaussee (*Koninklijke Marechaussee* or Kmar), unless in case of an immediate threat to the life or safety of the foreign national, the official or third parties.

57. The CPT recommends to take the necessary steps to ensure that:
•any foreign national to be deported is given the opportunity to be medically examined prior to the removal operation;
•all foreign nationals who have been the subject of an abortive deportation operation undergo a medical examination as soon as they are returned to detention (paragraph 80).

The Government would like to stress the fact that a medical screening is always conducted within 24 hours upon arrival in a detention centre. If there are indications or if a previous procedure shows that there are medical problems, a fit-to-fly check will be performed. With respect to a return to a detention centre after a removal has failed, foreign nationals are referred to the medical service in the detention centre if there are indications of medical problems. In that case, a fit-to-fly check can be performed again upon a new departure. Moreover, foreign nationals can request that Article 64 of the Aliens Act be applied if there are medical problems. Under this article, there will be no removal if the medical advisor states that the state of health of the foreign national does not allow him/her to travel or the cancellation of the medical treatment will create a medical emergency and the relevant medical symptoms cannot be medically treated in the country of origin or another country the person concerned can go to. DT&V or the officer charged with the removal may, if there are specific indications that the foreign national is medically unable to travel, ask the Medical Advisors Office (*Bureau Medische Advisering*) of the Immigration and Naturalisation Service for advice. If, following the request of the foreign national or DT&V, it is decided to apply Article 64 of the Aliens Act, the foreign national detention will be lifted because it then concerns lawful residence.

58. The CPT comments that in the interest of transparency, it would be desirable for CITT reports on individual expulsion cases to be made public (paragraph 81).

CITT publishes an annual report which is publicly available. This annual report contains a compilation of the information gathered by the members of CITT on individual expulsion cases. There would therefore be little added value to publish the individual reports which in fact are more the personal observations of a given member of CITT. The Government would not support a change in this practice, also in view of the need to protect the privacy of the alien concerned.

59. The CPT requests clarification on the possible use of pepper spray by escort leaders (paragraph 77).

At the time of the visit by a delegation of the Committee, escort leaders of the Royal Netherlands Marechaussee (*Koninklijke Marechaussee* or Kmar) used the document titled 'Reporting Form for Use of Violence during Removals' (*Meldingsformulier geweldsaanwending bij uitzettingen*) if any form of violence had been used during the removal of a foreign national. The text of this reporting form was literally based on the text stated in the regular (criminal) reporting form for use of violence, as a result of which the above form still contained the option 'Pepper Spray'. This gave the impression that Kmar staff members could use this aerosol during the removal of foreign nationals. This, however, is not the case. Kmar has never used pepper spray as a coercive measure for removals. The use of pepper spray is not a means that is available to Kmar staff members during removals. For this reason, the incorrect reference in the form was removed several months ago. The document

titled 'Reporting Form for Use of Violence during Removals' was adjusted and changed in the Foreign Nationals Basic System (*Vreemdelingen Basis Systeem* or VBS).

60. The CPT requests confirmation that the HIV tests concerning a drug addicted detainee met by the delegation at the Detention and Expulsion Centre Schiphol-Oost have been carried out and information on the follow-up given to the case (paragraph 84).

With respect to the relevant foreign national, the Government wants to point out the following. The file of the person concerned did not mention anything about an HIV infection. Nor did the person concerned mention such infection during the intake interview, nor asked for any diagnostics in this respect.

In a more general sense, the Government wants to point out that all detainees known to have been infected with HIV are screened, start with a treatment (where necessary), or are referred to specialists.

Mental health institutions

<u>Follow-up visit to the Forensic Psychiatric Centre (FPC) Dr van Mesdag</u>

61. The CPT recommends to take the necessary steps to further develop workshops and other communal therapeutic activities, in parallel with the rising number of patients. This will require both infrastructure development and additional staff resources (paragraph 96).

The Government endorses that therapeutic interventions and workshops are not static. To an increasing extent, care needs assessments are conducted, care needs are formulated and included in care programmes based on national standards. These standards are continuously reviewed based on evolving insights as a result of scientific research, among other things. Care is demand-driven and deployment of personnel is adequately attuned to this. This way, care can be organised more efficiently and effectively, also in case of an increasing number of patients.

As a rule, patients are detained from 9.45 pm to 8.15 am (to 11.00 am at the weekend). This is done in order to promote an adequate day and night rhythm. During the day, policy is aimed at activating and stimulating patients to follow the day programme. The day programme consists of therapy, daytime activities, a group session and leisure (whether or not structured).

62. The CPT recommends to take appropriate measures so that more staff with specific therapeutic skills, in particular psychiatric nurses, treat patients with severe psychiatric disorders in Units Eeems 1 & 2 and Dollard 1 & 2 (paragraph 97).

Highly educated social therapists work in the wards. The units referred to by the Committee are meant for Risk-Intervention (RI) patients. From a safety point of view, this is a highly controlled environment. The RI units have a national function; the Mesdag (apart from FPC Veldzicht and FPC De Kijvelanden) is hereby intended for (crisis) relief for the other FPCs. These expressly do not concern the admission wards. The Committee suggests that a different offer will help RI patients to develop their behaviour (more quickly) so that they can move on to a less controlled setting. The Government is not convinced that the treatment in the clinic is

insufficient for these patients. The problem is that these patients only function in a highly structured setting, because they become dysfunctional if they stay in regular forensic wards.

63. The CPT recommends to take urgent measures in order to address adequately the situation of ten psychotic patients who had remained in the "instroom" process for more than a year (paragraph 98).

At the time of the visit by the Committee, the clinic was waiting for the new building to be completed (November 2011). This resulted in a few patients having to stay longer in the "instroom" ward. The average length of stay in this ward was 7.5 months during the period between September 2010 and September 2011. The average length of stay for patients admitted after December 2011, after the opening of the new building, is 4 months. A longer length of stay in this ward has, however, no consequences for the duration of the hospital treatment since care programmes are used so that patients are offered care at the right time, irrespective of where they are staying. The deployment of staff has been adequately attuned to this.

64. The CPT recommends to pursue vigorously efforts to fill the vacant posts of psychiatrists (paragraph 100).

At the time when this government response to the report was prepared, all vacancies in the clinic had been filled and two additional psychiatrists had been employed. There are no problems with the recruitment of staff. There is also frequent cooperation with forensic psychologists.

65. The CPT recommends the Dutch authorities to train more forensic psychiatrists in the Netherlands (paragraph 100).

In response to this recommendation, the Government first wishes to emphasise that physicians are free to choose their speciality. Unfortunately, this could result in a temporary shortage of qualified staff. However, various initiatives are taken in order to promote the quality of staff in the forensic care institutions;

- cooperation with (regular) mental healthcare services allows for a broader exchange of staff;
- the FPCs and the universities of Maastricht, Nijmegen, Tilburg and Amsterdam work closely together with respect to the Forensic Care master's degree programmes;
- within initial education, the minor 'working within a compulsory framework' is being adjusted.

66. The CPT recommends to take measures to ensure an increase in the number of posts for socio-therapists at the FPC (paragraph 101).

The relationship between the number of patients and the number of staff members has been established on the basis of professional standards. In view of the quality of the care provided and the results achieved, the Government currently sees no reason to increase the number of staff members for the current number of patients.

67. The CPT recommends to take steps to ensure that patients who are the subject of an isolation measure are offered outdoor exercise on a daily basis (paragraph 104).

This recommendation has been realised in all secluded programmes for some years now. It is due to the presence of the Integrated Security Service (*Dienst Geïntegreerde Beveiliging* or DGB), whether or not with the use of security equipment, that FPCs are able to have long-term isolated patients stay in a for that purpose designed outdoor exercise area. If, in very exceptional cases, this is not possible for security reasons, extra restricting measures will be imposed and registered at all times.

68. The CPT recommends to review the restraint/immobilisation techniques used vis-à-vis agitated patients, in the light of the remarks in paragraph 106, and adapt the training of the security team accordingly (paragraph 106).

This recommendation is based on an incident that took place in June 2007. During a violent incident in the isolation area, a neck lock was used in a critical situation in order to restrain a patient. However, the relevant patient had heart problems and lost consciousness. Afterwards, several investigations (an internal investigation, an investigation by the National Police Internal Investigations Department and investigations by a forensic pathologist from the Groningen University Medical Centre and a pathologist from the Netherlands Forensic Institute) showed that no relationship could be established between the use of the neck lock and the patient's death.

As patients often use their head when wanting to injure third parties (for example by biting or head-butting), the security staff is trained to respond to this (whether or not preventively). Training courses are given in the use of these techniques. In accordance with the Violence Instructions of FPC Van Mesdag, violence and weapons may only be used by the specially trained group of staff members from the DGB. Training courses are given in the use of these techniques. Proportionality and subsidiarity are always leading principles when using these techniques. In accordance with the Violence Instructions, the neck lock may only be used by the DGB. However, the DGB hardly ever uses the neck lock in practice.

69. The CPT recommends to take steps with a view to systematically recording the events, as captured by the CCTV system, whenever an incident occurs in the FPC (paragraph 106).

Camera images are stored for seven days as a standard. Any incidents are stored on an external hard disk and burned on an additional DVD.

70. The CPT recommends to ensure that continuous forced medication for more than a year is the subject of a further review by an independent psychiatrist from outside the institution (paragraph 107).

With respect to patients who are in a long-term compulsory process, the internal *Commissie Voorbehouden Beslissingen* (CVB) considers each year whether a second opinion is required. An external psychiatrist needs the patient's permission to inspect the medical file. If a patient refuses to grant his/her permission, a procedure is started (or continued) on the initiative of CVB in which an internal psychiatrist participates who has not directly been involved in the treatment of the relevant patient.

The Government will review this policy and assess whether an external psychiatrist should be deployed as a standard.

71. The CPT comments that the rate of "separatie" for patients in "instroom" units is still rather high and the 22-day isolation measure referred to in paragraph 104 is difficult to justify (paragraph 104).

First of all, the Government wishes to emphasise - in line with the findings of the Committee - that in the past few years the number of isolations in general has significantly decreased. The number of isolations of patients who are in the admission phase and RI patients has remained reasonably stable over the past three years. A limited number of patients in the RI unit is isolated frequently, but this is, unfortunately, inherent to their problems. In 2011, 52 patients were separated for a total of 174 times. The average duration of the separation is 91 hours. However, it should be noted here that this average was pulled up as a result of a very long separation (9320 hours) of a patient with respect to whom there was a very special security issue. There have been frequent consultations about this separation between the Healthcare Inspectorate, the Consultation and Expertise Centre (*Centrum voor Consultatie en Expertise* or CCE) and external experts.

72. The CPT comments that if a libido suppressant treatment is proposed, the terms of the "therapeutic contract" agreed upon by the psychiatrist and the patient should be recorded in writing and signed by the patient concerned and kept in the patient's file (paragraph 108).

The use of libido suppressants can be proposed by both clinics and forensic patients. Libido suppressants are never administered within the context of compulsory treatment.

Forensic patients are properly informed of the use of libido suppressants and their sometimes serious side-effects. In the 'Policy Framework for Libido Suppressants in Forensic Hospitals', which will be determined soon, this will also be instructed to clinics. The use of libido suppressants is included in the treatment plan agreed with the forensic patient. Based on a recent amendment to the Hospital Orders (Framework) Act (*Beginselenwet Verpleging terbeschikkinggestelden*), the person concerned will have to agree to the treatment and not resist to it. As an additional requirement of due care, the above police framework provides that the consent must also be set out in writing as much as possible and signed by the forensic patient. In doing so, the clinics take into consideration that this consent will not easily be established in view of the compulsory admission of forensic patients. That is why an additional careful approach is required, in which attention is also to be paid to the decisional competence of forensic patients. It should be prevented as much as possible that forensic patients decide to be treated with libido suppressants, for the sole reason of qualifying for leave in doing so. The Government emphasises that the use of libido suppressants does not automatically result in a leave authorisation.

The Government is of the opinion that the implementation of the Policy Framework for Libido Suppressants in Forensic Hospitals sufficiently guarantees the voluntariness of the use of libido suppressants. As soon as this policy framework has been determined, the CPT will receive a copy of this.

73. The CPT would like to receive the comments of the Dutch authorities on the remarks in paragraph 99, among which those concerning the application of the principle of "equivalence of care" when assessing the quality of psychiatric care for patients in forensic settings (paragraph 99).

With respect to the various remarks of the Committee, the Government would like to point out the following:

- The Committee describes that patients complain about the slow course of the treatment under a hospital order and, in this connection, points out that they have to wait for their first unsupervised leave for an average of four to six years. The Advisory Board on Review of Leave from Detention under a Hospital Order (*Adviescollege Verloftoetsing TBS* or AVT) advises the Ministry of Security and Justice on whether or not to grant an authorisation for leave to the head of the institution for a forensic patient. This independent board was set up in order to reduce the number of failures to return and recidivism during the hospital order. The AVT consists of experts in the field of treatment under a hospital order (psychiatrists, psychologists and legal experts). The granting of leave to forensic patients contains safeguards for finding a proper balance between the protection of society on the one hand and a responsible social rehabilitation of forensic patients on the other hand. The step from supervised freedom to unsupervised freedom is a very big step that takes the necessary (treatment) time for most forensic patients. Incidentally, the number of patients with an authorisation for unsupervised leave is increasing (2010: 254, 2011: 302, see *Forensische Zorg in Getal* dated 2 July 2012). In addition, it is being assessed how to reduce the average length of stay under a hospital order.
- The Committee also described that seven of ten patients interviewed could not be granted leave due to staff shortage. If no leave can be granted, this will, in principle, still be granted at a later point in time (usually the same day). Patients can sign up at various times in order to practise a leave. However, it is now also possible to sign up at a time at which there are no supervisors available (this is then stated in the sign-up list). Nevertheless, patients do sign up at that time. The clinic says that they pay attention to this error in the system and will take action, so that it will be clear in advance to both patients and staff as to when a leave can take place.
- The Committee states that it spoke to a number of patients who had to return to the FPC due to relatively small disciplinary incidents during their stay in a facility with a lower security level. The Government cannot deduce from the report which disciplinary incidents are at issue. In a general sense, the Government points out that the FPC assesses whether a patient must return to the clinic immediately after an incident. If it concerns a serious incident, such as unauthorised absence during the leave, the head of the Unit for Leave from Detention under a Hospital Order (*Verlofunit TBS*) will, on behalf of the Minister of Security and Justice, decide whether the relevant patient, often after adjustment of the risk management, can be placed back to the institution with a lower security level. In many cases, a new placement with a reviewed risk management will be possible.
- The higher frequency of contact with a psychiatrist of at least once a month, as described in the report, for the group of stabilised schizophrenic patients who take antipsychotics does not apply to all regular mental healthcare institutions. There are significant differences within regular mental healthcare services in the availability of a psychiatrist and the division of tasks between psychiatrists and community psychiatric nurses, which makes it difficult to make a comparison in this respect. However, the

Government emphasises that the psychiatric care for patients focuses on the patients' need for care and that customised care is offered. In addition, the provision of care is, evidently, attuned to the circumstances in the forensic care institutions. The Government considers the care provided to be sound.

74. The CPT requests confirmation that the two cells located on the ground floor of the "old remand prison" have been definitively taken out of service (paragraph 105).

The Government agrees to the findings of the Committee that the relevant cells did not meet the requirements set. For this reason, the relevant separation cells were fully overhauled and were completed in July 2012.

The "long stay" wards for TBS patients of the Pompe Institute in Zeeland

75. The CPT recommends to take immediate steps to ensure the equivalent of one FTE post of fully trained psychiatrist at the "long stay" wards of the Pompe Institute in Zeeland (paragraph 119).

The Government endorses the importance of the best possible psychiatric care for long-stay patients. However, practice has shown that it is very difficult to recruit sufficient and suitable forensic psychiatrists (see also the answer under point 65) and this turns out to lead to difficulties especially in the long-stay location in Zeeland. In view of recent problems in this area, a structure was chosen in which a junior doctor with ample experience in forensic psychiatry (among others as a practitioner in the field of clinical forensic psychiatry and as reporter from the Netherlands Institute of Forensic Psychiatry and Psychology) was appointed for 27 hours, in addition to a fully licensed psychiatrist for approximately 8 hours a week. They consult each other on a weekly basis on the psychiatric problems and also hold weekly consultations with the somatic physician (general practitioner) in order to keep a good picture of somatics in that way. Moreover, if there are any questions, the clinic can always consult the psychiatrists from the treatment clinic of the Pompe foundation through the consultation of psychiatrists. Moreover, case discussions with psychiatrists from elsewhere will be organised in individual cases. The quality of this structure is considered to be sufficient and its continuity is hereby also sufficiently guaranteed. If, in the future, opportunities arise to provide psychiatric care in an alternative manner, with more hours spent by psychiatrists and possibly in combination with the treatment clinic, these opportunities will, of course, be taken advantage of.

76. The CPT comments that there is only limited access to natural light (through a semi-transparent glass) in the cells in the two isolation sections (paragraph 121).

Each of the relevant isolation sections has one window case of a formidable size. The glass is safety glass that meets the highest safety requirements. In order to guarantee the privacy of the isolated patient, milk glass is used, so that the isolated patient cannot directly look outside, nor can anyone look inside. The milk glass ensures that other patients cannot see the isolated patient, and vice versa. This is in accordance with the Schedule of Requirements of the Ministry of Security and Justice, stating that if an isolation section is in the vicinity of other sections where patients are staying, the view between the isolation section and the other patients must be obstructed. In the case of Corridor, milk glass was chosen at the time in order to ensure this. Following the Committee's report, the Government decided that in the future, no more patients will be placed in the relevant isolation cells with milk glass. It will be

assessed whether the milk glass will be replaced by transparent glass (while still guaranteeing the privacy of the isolated patient) or whether to find another solution (for example placing isolated patients elsewhere).

77. The CPT requests a copy of the results of the global review of the status of all "long stay" TBS patients (number of the patients concerned, with details of the decisions taken: proposed return to normal TBS regime, confirmation of "long stay" status, etc.) (paragraph 116).

Long stay patients are reassessed every three years in order to determine whether a long stay is still necessary. The reassessments by the institutions and the findings from independent reporters are submitted to an independent advisory committee, the National Advisory Committee for Long Stay Placements in Forensic Care (*Landelijke Adviescommissie Plaatsing longstay forensische zorg* or LAP). This committee advices the Minister of Security and Justice on possible long stay placement, continuation of long stay and termination thereof. If the long stay-status is lifted, patients are transferred to a forensic hospital ward or to a secured mental healthcare institution. The exact figures are given below.

At the start of the reassessment in the beginning of 2011, there were 206 forensic patients with a long stay-status. Since then:

- four new applications for a long stay-status have been granted;
- nine patients have died;
- 28 patients have been transferred to a forensic hospital ward;
- 23 patients have been transferred to a long care facility;
- one patient has been discharged because of a conditional termination;
- three patients have been discharged because the hospital order was terminated;
- one patient has gone back to the treatment under a hospital order on the instructions of the Council for the Administration of Criminal Justice and Youth Protection (*Raad voor Strafrechtstoepassing en Jeugdbescherming*).
- one patient has been sentenced again, as a result of which this patient will be detained for a number of years.

On 27 November 2012, there were 145 forensic patients with a long stay-status. Of these forensic patients:

- 117 were assessed after which the long stay-status was continued;
- nine patients were not yet ready to be reassessed because they had not had a long stay-status for three years yet.
- 19 reassessments were not yet completed, for example because the case was deferred by the LAP.

78. The CPT requests the comments of the Dutch authorities on the potential detrimental effect of the envisaged "further tightening of the TBS policy" (paragraph 125).

The austerity of detention under a hospital order merely relates to the leave status of long-stay patients whose treatment is therefore not aimed at social rehabilitation. For this group of patients, the Government considers public safety to be guiding. In view of this, it was decided that only long-stay patients with a low security need are allowed to go on leave. The security level is determined during the three-yearly reassessment of the long stay patients. If the security level is low, an authorisation for escorted leave can be applied for.

In this connection, the CPT also refers to a number of other policy intentions and legislative proposals. With respect to demanding earlier medical data of suspects who refuse to cooperate in the behavioural expert's report by the Pieter Baan Centre (unwilling observandi), the Government points out that the legislative proposal for the Forensic Care Act, which provides for such regulation, was recently accepted by the House of Representatives of the States General and is currently debated in the Senate. This regulation, which can only be used as *ultimum remedium* in case of very serious offences, contains a very careful procedure containing guarantees. For instance, a multidisciplinary committee, consisting of two doctors including at least one psychiatrist, a behavioural expert and two legal experts, has an important advisory role. The data are first provided to the experts reporting on a person's behaviour after the Parole Appeals Division of the Arnhem Court of Appeal, of which a psychiatrist and a psychologist are a member, has given an authorisation for this which has been established in law. The Government is therefore of the opinion that this regulation does sufficient justice to the suspect's interests.

With respect to the introduction of lifelong supervision of sex offenders detained under a hospital order within the context of a conditional termination of compulsory psychiatric treatment, the Government points out that a legislative proposal is being drafted which allows for long-term supervision of sex and violent offenders. However, this does not automatically mean lifelong supervision, but supervision for a fixed period of time, which can be extended by the court each time. In its decision to have the conditional termination of the compulsory psychiatric treatment continue, the court will, among other things, take the principle of proportionality into account.

<u>The Forensic Psychiatric Department (FPD) for mentally disabled patients in Oostrum</u>

79. The CPT recommends to take measures in order to set up a centralised register on the use of means of restraint (including isolation) as well as to develop a policy on such use (paragraph 135).

The number of isolations and violent incidents is now registered in various ways. Isolations are registered in the FPCs in a specially developed data set named Argus. In addition, the number of violent incidents and isolations is stated in the performance indicators to be completed every year by the institutions for the purpose of providing insight into the quality of care. At patient level, any disciplinary measures are recorded in the patient's file. Disciplinary measures are also a topic of investigation by the various Inspectorates. In view of this, the Government is of the opinion that setting up a central register is not necessary. The added value of such a register does not outweigh the costs for setting up and maintaining such a register.

Insofar as the recommendation relates to policy development, the Government points out that policy-making is primarily reserved for the relevant medical professionals and not for the Ministry of Security and Justice. The relevant medical professions are currently working on preparing a multidisciplinary guideline on 'Coercion', which is partly financed by the Ministry of Security and Justice. The Dutch Association for Psychiatry (*Nederlandse Vereniging voor Psychiatrie* or NVvP) currently has a guideline available called 'Guideline on decisions on coercion: admission and treatment' (*Richtlijn besluitvorming dwang: opname en behandeling*).

Furthermore, the Government points out that the Dichterbij Forensic Psychiatric Unit stated that it will follow the Committee's recommendation in full. All recommendations have by now been fully implemented. All forms of restriction of freedom can be recorded according to date and time in the new IT application Re-Act. The board of the institution will ask the medical director to supervise this and to periodically check whether it complies with the Committee's recommendation.

80. The CPT recommends to take the necessary steps to ensure that patients are only searched by staff of the same sex and that any search which requires a patient to undress is conducted out of the sight of staff of the opposite sex (paragraph 137).

The institution regrets this incident and has taken adequate measures in order to avoid repetition in the future.

81. The CPT comments that the isolation cells at the FPD are very oppressive and should not be used vis-à-vis patients with low IQ's (50 or lower). Furthermore, they should be equipped with a bed, a table and a chair, if necessary, fixed to the floor (paragraph 136).

The Government would like to point out that the institution no longer admits any patients with an IQ below 50. The Committee's recommendation to place a bed, table and chair in the isolation section is followed in those situations where this is possible. In a few cases, the risks, also in case of secured material, will be too substantial and the room will only have a mattress.

82. The CPT would like to receive the comments of the Dutch authorities on the patient referred to in paragraph 129 (paragraph 129).

An enquiry at the Dichterbij Forensic Psychiatric Unit shows that, apart from the treatment programme at this unit, the relevant patient was sentenced for another criminal offence as well. With respect to the latter case, the person concerned was sentenced to imprisonment, which he has to serve immediately after the treatment.

83. The CPT requests confirmation that the second post of behavioural psychologist has now been filled (paragraph 132).

The Government can confirm this; the second post of healthcare psychologist has been filled since 1 November 2011.